

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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BLAKE WINGATE,

Plaintiff,

- against -

NEW YORK CITY DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.
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DOC #:
DATE FILED: **7/3/08**

07 Civ. 8679 (RMB) (RLE)

ORDER

Having reviewed Defendants' motion to dismiss Plaintiff's Complaint, dated February 29, 2008; Plaintiff's opposition brief and cross-motion, dated March 11, 2008, seeking leave to amend the Complaint and for additional time to serve certain Defendants; and Defendants' reply brief, dated July 2, 2008, the Court finds and directs the following:

- (1) Defendants' motion to dismiss is denied without prejudice.
- (2) Plaintiff's cross-motion for leave to amend the Complaint to state claims against the City of New York (in place of the New York City Department of Correction[]) is granted. "Because [Plaintiff] is a pro se litigant, the Court will deem the Complaint caption amended to reflect the City of New York . . . as the proper [D]efendant." Ghosh v. New York City Dept. of Health, No. 03 Civ. 780, 2006 WL 298743, at *13 (S.D.N.Y. Feb. 7, 2006); see also Matima v. Celli, 228 F.3d 68, 81 (2d Cir. 2000); Branum v. Clark, 927 F.2d 698, 705 (2d Cir. 1991).
- (3) Plaintiff may have until September 18, 2008 to properly serve Deputy Barnett and C.O. Atherly with the Summons and Complaint. See Valentin v. Dinkins, 121 F.3d 72, 75 (2d Cir. 1997); Davis v. Kelly, 160 F.3d 917, 922 (2d Cir. 1998). This

date is final and Plaintiff is advised that his failure to serve the Summons and Complaint on Deputy Barnett and C.O. Atherly by September 18, 2008 may result in the dismissal of his claims against those two named Defendants. See Green v. National Grid, 07 Civ. 0060S, 2008 WL 1732972, at *2 (W.D.N.Y. Apr. 8, 2008). Plaintiff is directed to Defendants' reply brief, which states, "if [P]laintiff is requesting assistance in determining the identity of certain [D]efendants, [D]efendants will attempt, with the new information provided by Plaintiff, to ascertain the identity of the remaining [D]efendants. Should the [C]ourt deny [D]efendants' motion [to dismiss], [D]efendants will provide [P]laintiff with any new information they are able to obtain on the identity of the officers and how they may be served." (Def. Reply to Pl. Opp'n and Cross-Mot., dated July 2, 2008, at 3.)

Order

For the reasons stated above, motion [#17] is granted and motions [#18] and [#20] are dismissed without prejudice. The Clerk is respectfully requested to change the caption of this case to name the City of New York, not the New York City Department of Correction, as a Defendant.

The parties are directed to appear for a status conference before the Court on September 24, 2008 at 10:30 a.m. in Courtroom 21D (21st floor), 500 Pearl Street, U.S. District Courthouse. Defendants are directed to make all necessary arrangements for Plaintiff to appear by phone. The parties are directed to engage in good faith settlement negotiations prior to the September 24, 2008 conference.

Dated: New York, New York
July 3, 2008


RICHARD M. BERMAN, U.S.D.J.